No. 82-1546

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LOIS BUTLER,

Petitioner,

v.

PEABODY INSTITUTE OF THE CITY OF BALTIMORE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR PEABODY INSTITUTE OF THE CITY OF BALTIMORE IN OPPOSITION

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BRIEF FOR PEABODY INSTITUTE OF THE CITY OF BALTIMORE IN OPPOSITION

The Petitioner, Lois Butler, contends that the state court violated her Seventh Amendment right to jury trial in ruling that her complaint failed to state a cause of action. Petitioner further contends that the Court of Special Appeals of Maryland violated her Fifth Amendment and Fourteenth Amendment rights to due process in denying her request for a transcript of oral argument in the appeal of a civil action. These issues will be addressed *seriatum*.

ARGUMENT

I.

PETITIONER WAS NOT DENIED HER SEVENTH AMENDMENT RIGHT TO JURY TRIAL.

A. The Seventh Amendment Is Inapplicable To State Civil Court Proceedings.

The Seventh Amendment provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rule of the common law.

This Court has consistently held that a litigant in a state court civil action has no right to trial by jury under this Amendment or under the due process clause of the Fourteenth Amendment. *Minneapolis & St. L. R. Co. v. Bombolis*, 241 U.S. 211, 219-20 (1916); *Walker v. Sauvinet*, 92 U.S. 90, 92-93 (1876); *Edwards v. Elliott*, 21 Wall. (88 U.S.) 532, 557 (1874). *Accord, Woods v. Holy Cross Hospital*, 591 F.2d 1164, 1171 (5th Cir. 1979); *Wartman v. Branch 7, Civil Division County Court, Milwaukee County, State of Wis.*, 510 F.2d 130, 134 (7th Cir. 1975); *Iacaponi v. New Amsterdam Cas. Co.*, 258 F. Supp. 880, 884 (D.C. Pa. 1966), *aff'd*, 379 F.2d 311 (3rd Cir. 1967), *cert. denied*, 389 U.S. 1054 (1968); *Carter v. City of New Orleans*, 327 So. 2d 488 (La. App. 1976); *Bringe v. Collins*, 274 Md. 338, 335 A.2d 670 (1975); *Irwin v. Globe-Democrat Pub. Co.*, 368 S.W.2d 452 (Mo. 1963); *Wooten v. Dallas Hunting & Fishing Club, Inc.*, 427 S.W.2d 344 (Tex. Civ. App. 1968). In *Walker v. Sauvinet*, 92 U.S. 90, 92-93 (1876), this Court stated:

> By art. 7 of the amendments, it is provided, that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury

> shall be preserved." This, as has been many times decided, relates only to trials in the courts of the United States. *Edwards v. Elliott,* 21 Wall. 557. The States, so far as this amendment is concerned, are left to regulate trials in their own courts in their own way. A trial by jury in suits at common law pending in the State courts is not, therefore, a privilege or immunity of national citizenship, which the States are forbidden by the Fourteenth Amendment to abridge. A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the State courts affecting the property of persons must be by jury.

Thus, the Seventh Amendment right to jury trial does not apply to state court civil proceedings such as the instant case.

B. The Seventh Amendment Does Not Require Trial By Jury On Issues Of Law.

Even if the Seventh Amendment applied to state court proceedings, it would not mandate a jury trial of the issue decided by the state court here. Petitioner contends that the Court of Special Appeals denied her right to jury trial in ruling that her complaint failed to state a cause of action. *See Petition for a Writ of Certiorari,* at page i. Specifically, the trial court sustained a demurrer challenging the legal sufficiency of petitioner's second amended declaration. The Court of Special Appeals of Maryland affirmed that jugdment holding that the declaration failed to allege sufficient facts to state a cause of action for defamation. *See Petition for Writ of Certiorari, Appendix C,* at pages 14-16. The petitioner thereupon filed a petition for writ of certiorari in the Court of Appeals of Maryland, which was denied. *See Petition for Writ of Certiorari, Appendix D,* at page 17.

In *Baltimore & Carolina Line, Inc. v. Redman,* 295 U.S. 654, 656-57 (1935), this Court stated:

The Seventh Amendment to the Constitution prescribes:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."
>
> The right of trial by jury thus preserved is the right which existed under the English common law when the amendment was adopted. The Amendment not only preserves that right but discloses a studied purpose to protect it from indirect impairment through possible enlargements of the power of re-examination existing under the common law, and to that end declares that "no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."
>
> The aim of the Amendment, as this Court has held, is to preserve the substance of the common-law right of trial by jury, as distinguished from mere matters of form or procedure, and particularly to retain the common-law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, *issues of law are to be resolved by the court* and issues of fact are to be determined by the jury under appropriate instructions by the court. [footnotes deleted, emphasis added].

In light of this authority, the court in *Allen v. Biggs*, 62 F. Supp. 229 (E.D. Pa. 1945), specifically held that the dismissal of a complaint for the reason that it failed to state a cause of action did not violate the plaintiff's Seventh Amendment right to jury trial. *See also Bass v. Hoagland*, 172 F.2d 205, 209 (5th Cir. 1949), *cert. denied*, 388 U.S. 816 (1949); *Monroe Auto Equip. Co. v. Heckthorn Mfg. & Supply Co.*, 214 F. Supp. 704, 706 (W.D. Tenn.,

W.D. 1963), *aff'd.* 332 F.2d 406 (6th Cir. 1964), *cert. denied,* 379 U.S. 888 (1964). Under these principles, the issue of whether the petitioner's declaration here states a cause of action is purely one of law and thus within the province of the court, not the jury. Therefore, even if the Seventh Amendment right to jury trial were held to apply to state proceedings, the Maryland court did not violate that right in deciding that petitioner's declaration failed to state a cause of action.

It is therefore respectfully submitted that petitioner has failed to properly raise a federal question under the Seventh Amendment.

II.

PETITIONER WAS NOT DENIED RIGHTS GUARANTEED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS.

Petitioner also contends that the state court violated her Fifth and Fourteenth Amendment right to due process in denying her request for a transcript of oral argument before the Court of Special Appeals of Maryland. The due process clause has never been construed to mandate a transcript of oral argument at the appellate level in a civil action. Rather, that clause has been construed to require only that where a State provides for appellate review, litigants who cannot afford to buy transcripts must be granted the same appellate review as litigants who can. *E.g., Griffin v. Illinois,* 351 U.S. 12 (1956). Here, the Maryland appellate courts deny all litigants transcripts of oral argument. In this regard, therefore, the petitioner has been afforded the same appellate review as all other litigants. Accordingly, there has been no violation of her rights under the due process clause. Further, since no evidence may be presented in Maryland appellate courts, the absence of transcripts cannot affect the fundamental rights of the parties. Finally, although there is no provision for the transcription of oral argument before the

Maryland appellate court, that court is open to the public and there is no restriction on the stenographic transcription of argument by a privately retained court stenographer. Petitioner, therefore cannot assert that the state court has somehow denied her a fundamental constitutional right.

Even if the due process clause mandates a transcript of oral argument in a civil action, it is apparent that the denial of such a transcript did not prejudice the petitioner here. Petitioner asserts that during the course of oral argument before the Court of Special Appeals of Maryland counsel for respondent made a significant admission in open court. Petitioner further avers that in denying her request for a transcript of that argument, the Court of Appeals jeopardized her opportunity to argue the effect of that alleged admission before the Maryland Court of Appeals. *See Petition for a Writ of Certiorari,* at pages i and 13.[1] Petitioner, however, enjoyed the full benefit of any such admission because it was made by counsel in open court and was relevant to the issue then before the court.

Accordingly, petitioner has failed to properly raise a federal issue under the Fifth or Fourteenth Amendments.

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[1] The Maryland appellate court system consists of two courts: The Court of Special Appeals and The Court of Appeals. The former is an intermediate appellate court and has jurisdiction of cases appealed from trial courts. The latter is the highest Maryland court. The Court of Appeals may, pursuant to a grant of certiorari, hear cases previously heard by the Court of Special Appeals. *See* MD. CTS. & JUD. PROC. CODE ANN. §§ 12-307 & 12-308.

CONCLUSION

For the reasons stated, it is respectfully submitted that petitioner has failed to properly present a federal question and has failed to demonstrate special and important reasons for the issuance of a writ of certiorari by this Court.

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